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Report on the Second China-ASEAN Expo 18-21 October 2005, Nanning, Guangxi, China

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REPORT ON THE SECOND CHINA-ASEAN EXPO

18-21 October 2005

NANNING, GUANGXI, CHINA

By *Sompong SUCHARITKUL**

I. Introductory Note

This is a preliminary report on the Second CHINA-ASEAN Free Trade Area (CAFTA, *aliter* ACFTA for ASEAN-CHINA) Exposition at Nanning in Guangxi Zhuang Autonomous Region, People's Republic of China on 18-21 October 2005. The purpose of this report is to bring to the attention of international business circles, traders and investors alike from within and outside the CAFTA geographical confines new openings and continuing phenomenal growth in business and investment opportunities in the combined ASEAN-CHINA region of East and South-East Asia with a thriving body of 1.85 billion consumers, by far the largest potential single market on earth at any time. The magnitude of its colossal economic power, taken as a united composite whole, surpasses or at least equals any regionally integrated economic association, currently operational in any part of the contemporary world. The significance of this exciting overture can hardly be exaggerated. It clearly demonstrates the progressive cumulative force of collective and collaborative mutual cooperation among free-thinking member nations of the global community with the best of intention and the soundest of structural and institutional frameworks.

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It is difficult to assess more fully the impact of the Second CAFTA Expo 2005 at Nanning on the expansion of intra ASEAN-CHINA trade and investment in real terms without taking into account in some measure the untiring efforts and meticulous care devoted to the preparations for the occasion by the planning and organizing committees of the Host Government, of the Guangxi Autonomous Region and of the city of Nanning. It is necessary and helpful to provide readers with a brief historical account of the succession of events and measures adopted by ASEAN and CHINA, leading to as well as those immediately preceding the Second CAFTA Expo 2005.

II. ASEAN-CHINA Economic Relations in Historical Perspective

(1) Historical Antecedents

In pre-ASEAN days prior to 1967 before the advent of the Association of South-East Asian Nations, except for a brief encounter at the First Asian African Summit at Bandung in 1955¹ and the Preparatory Ministerial Meeting for the Second Afro-Asian Summit Conference at Algiers in 1965², the relations between China and the nations of South-East Asia were negligible if not indeed virtually non-existent. Trade relations did exist between China and South-East Asia on a factual or de facto rather than official basis. Politically, the relations between China and South-East Asian States were conducted on the footing of peaceful but separate and distant co-existence. ASEAN nations were

¹ The People's Republic of China attended the First Asian African Summit at Bandung in April 1955. H.E. Premier Chou En-Lai of China was elected Chair of the Drafting Committee with H.R.H. Prince Wan Waithayakorn of Thailand as Rapporteur. A Joint Communique was adopted at this historic Summit which defined for the first time the Bandung Principles or Dasa Sila of friendly relations among nations, including principally non-interference in the domestic affairs of other States, equality of States, peaceful settlement of disputes and good neighborliness.

² A Chinese Delegation also attended the Preparatory Ministerial Meeting at Algiers in 1965 to work out the provisional agenda for the Second Afro-Asian Summit, the Conference that never was, as it turned out to be. See also Sompong Sucharitkul, "*The Second Afro-Asian Conference*", in *The Journal of the Council of World Affairs and International Law*, Vol.1, No.1 1966, Bangkok.

preoccupied with problems of their respective national economic developments and the challenge of economic cooperation within the region³.

On the other hand, China had to cope with other more pressing problems of social and industrial developments. Above all, China had yet to regain her rightful place in the global community of nations. China succeeded in recovering her seat in the United Nations in 1971⁴. But a new dawn did not begin to shine until a decade later when the open-door policy was adopted in practice⁵. With a completely new outlook in international relations, China was gradually integrated into the community of nations by ratifying *in grosso modo* various international conventions of general character and seeking admission or accession to Specialized Agencies of the United Nations, such as the International Labour Organization (ILO), the World Bank and the International Monetary Fund (IMF). Furthermore, China's admission to APEC along with Hong Kong and Taiwan did much to strengthen her international status as an eligible world economic partner. The *coup de grace* came at long last with China's successful bid for membership of the World Trade Organization (WTO) on 11 December 2001⁶, followed on her heel by Taiwan on 1 January 2002⁷, while Hong Kong, Special Administrative Region (SAR), China, was already an established member of the WTO⁸.

In the mean time, ASEAN as an Association for Regional Economic Cooperation has grown from strength to strength, closer and tighter in economic integration without at the same time ceasing to expand its ever-growing membership to embrace the entire region

³ See e.g., Sompong Sucharitkul "ASEAN Partnership and Cooperation with Non-ASEAN Partners", Singapore Journal of International Legal Studies (1991), pp.562-594.

⁴ See General Assembly Official Records of the 26th Session, 1971. The Nationalist Chinese Delegation walked out of the General Assembly before the final vote was taken.

⁵ See, e.g., "Constitution of the People's Republic of China" 4 December 1982, 9 Review of Socialist Law 183-208 (1983), 25; 52 Beijing Review 10-29 (1982). For comments on the 1975 and 1978 constitutions, see J. Cohen, *China's Changing Constitution*, 7 Nw.J.Int'l L.& Bus. 57, at 64-67, and 75-86 (1979).

⁶ See Understanding the WTO- members, <http://www.wto.org/eng/thewto> at p.1.

⁷ See Chinese Taipei, 1 January 2002, *ibid.* at p.3.

⁸ See Hong Kong, China, 1 January 1995, *ibid.* at p. 2. Hong Kong was an original member of the WTO

of South-East Asia as originally contemplated. From ASEAN founding members of five⁹, namely Indonesia, Malaysia, Philippines, Singapore and Thailand, it has added Brunei Darussalam to make ASEAN Six¹⁰, and Vietnam to become ASEAN Seven¹¹. The latest members include Laos, Myanmar, and Cambodia in that order¹². True it was that ASEAN was closely cooperating with the European Economic Community (EEC) from its very inception¹³, and in some respect used the European model as a possible point of reference. However, ASEAN was far less ambitious in its approach to economic integration. A possible ultimate goal in the foreseeable future was a Free Trade Area (FTA), never a Customs Union, let alone a Common Market. Nevertheless, unlike its European forerunner, ASEAN could not afford to be inward-looking, fully aware of its limitations and the need to create complementarity of commodities to compensate for pre-existing common export products, such as natural rubber and tin, not to mention palm oil and coconut. Being thus of necessity outward-looking, ASEAN has not only expanded to the limits of its geographical dimension, but has also sought closer cooperation with non-ASEAN partners from outside¹⁴. Hence it is apparent that there emerged a great many ASEAN pluses, namely ASEAN-JAPAN, ASEAN-USA, ASEAN-EEC (currently ASEAN-EU), ASEAN-

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See The ASEAN Declaration (Bangkok Declaration) of 8 August 1967, ASEAN Documents Series 1967-1988, third edition, ASEAN Secretariat, Jakarta, Doc. No.1

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See the Declaration on the Admission of Brunei Darussalam into the Association of ASEAN Nations, Declaration No. 13, in ASEAN Law Series, pp.64-67. Brunei joined ASEAN on 8 January 1984.

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Vietnam was the seventh nation to be admitted as member of the ASEAN Community on 28 July 1995 and in 1996 participated in the First Asia-EU meeting forum (ASEM Summit) in Bangkok, Thailand, as part of ASEAN Seven plus Three (China, Japan and the Republic of Korea) and the Fifteen Nations of the European Union.

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Laos and Myanmar were admitted as members of ASEAN on 23 July 1997. However, in the case of Cambodia, admission was delayed until 30 April 1999.

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It should be recalled that ASEAN was conceived through the indigenous efforts of its founding members, unassisted and unattended by outsiders. By that time, the UN Economic Commission, (then known as ECAFE, currently UNESCAP) was anxious to woo ASEAN, and the first opportunity came at the Second Ministerial Meeting in Jakarta on 16-18 August 1968 in connection with the Belgian-sponsored ASEAN Study. See Sompong Sucharitkul, *ASEAN Society, A Dynamic Experiment for South-East Asian Regional Co-operation*, in 1 Asian Yearbook of International Law, 113-148, 1993 Kluwer Academic Publishers, Printed in the Netherlands.

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See Sompong Sucharitkul, *EEC 1992: Impact on ASEAN*, Singapore Conferences on International Business Law, Conference IV: Current Developments in International Transfers of Goods and Services, 9-11 September 1992. See also *ASEAN Society*, cited in Note 13 supra, 3.2.3. *Co-operation with EEC*, p.143.

CANADA, ASEAN-AUSRALIA, ASEAN-NEW ZEALAND, ASEAN-RUSSIA and ASEAN-CHINA¹⁵. Of late there is also ASEAN-INDIA, not to mention other broader cooperation between Asia and Europe in the form of ASEM or ASEAN Seven plus China, Japan and Republic of Korea and European Union of fifteen and ASEAN +Three (i.e. China, Japan and South Korea)¹⁶.

In July 1991, ASEAN invited the Chinese Foreign Minister to attend ASEAN foreign Ministers Summit. In July 1994 China became a regular member of “ASEAN regional Forum”, a security mechanism launched by ASEAN to forestall any outbreak of hostilities regarding the disputes over a group of islands in the South China Sea, involving Vietnam, the Philippines, Malaysia, Brunei Darussalam, Taiwan and China, with potential natural resources adjacent to the continental shelf of Indonesia. In 1996, ASEAN elevated China from “Negotiating Partner” to “Dialogue Partner”. In December 1997, confronted by the 1997 Asian financial crisis, ASEAN established with CHINA a “Partnership of Neighbor and Mutual Trust Facing the Twenty-First Century” and began the 10 + 1 Dialogue in common struggle against Asian economic crisis. In 2002, ASEAN and CHINA concluded a Joint Declaration on the Conduct of Parties in the South China Sea. In October 2003, ASEAN and CHINA signed the Treaty of Amity and Cooperation in South-East Asia, thereby providing a fresh political guarantee for economic cooperation between ASEAN and CHINA reflecting a further step in progressive strategic partnership¹⁷.

Within the context of ASEAN-CHINA dialogue, it must have long dawned on the leaders of these eleven or ten + one nations that they have been co-existing in relative peace from time immemorial, and that the diversities that persisted within each of these ten + one East and South-East Asian nations were the exact same cultural diversities that have pervaded the whole of South-East Asia and practically the entire mainland of China throughout Chinese national history. There is a strong component of Chinese elements

¹⁵ See id. *Co-operation with Dialogue Partners*, pp.144-147.

¹⁶ See Simone Suelzer McCormick, *ASEM: A Promising Attempt to Overcome Protective Regionalism and Facilitate the Globalization of Trade*, in *Annual Survey of International and Comparative law*, Volume X (2004) pp.233-254

¹⁷ See *ASEAN-CHINA Dialogue Relations*, <http://www.aseansec.org/7587.htm>.

among the populations of each and every ASEAN nation. By the same token the prevailing religions practiced in South-East Asia, notably Buddhism, Hinduism and Islam were well known and also practiced in China, in as much indeed as the presence of Chinese culture and traditions is readily visible all through South-East Asia. Once removed from the vestiges of Western colonialism and left to themselves, ASEAN and CHINA spontaneously transformed peaceful coexistence into productive and prosperous collaboration prompted by active friendly cooperation.

For these reasons, it is not unnatural that instinctively ASEAN Ten and CHINA One together have logically combined their best efforts to create a zone of peace, freedom from outside interference, and constructive economic cooperation, thereby ensuring dramatic growth in regional prosperity. Free Trade Area seems to be an inevitable consequence and almost a foregone conclusion.

(2) ASEAN-CHINA Determination to Forge Closer Economic Relations in the Twenty-First Century

At their Fourth Informal Summit Meeting in November 2000, the Heads of State and Government of ASEAN Nations and CHINA agreed to look into the implications of China's accession to the WTO and to explore the feasibility of measures to strengthen economic cooperation and to tighten integration between ASEAN and CHINA¹⁸. The decision of the leaders to undertake feasibility studies in these fields was responsive to important global and regional developments during the course of the decade that ended at the closing of the twentieth century and ushered in the arrival of the new millennium.

A Report in October 2001, submitted by the ASEAN-CHINA Expert Group on Economic Cooperation, established by the ASEAN-CHINA Trade and Economic Joint Commission at its third meeting held in Kuala Lumpur, Malaysia, recalled that in the previous decade the world had witnessed an unprecedented process of globalization, culminating in 1994 in the transformation of the GATT into the WTO, the rise of regional

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See Paragraph 1 of the Executive Summary of the Main Report submitted by the ASEAN-CHINA Expert Group on Economic Cooperation, October 2001.

trading arrangements (RTA) of which 134 in number were deemed to be in force at the close of the century , and above all China's emergence as a new global economic power, enhancing the unencumbered inter-dependence between ASEAN and CHINA. During the last decade of the previous millennium, China's real GDP growth had averaged 10.1 per cent, the fastest rate of GDP growth in the world in real terms. During this same period, China's export grew threefold from US \$62.1 billion in 1990 to US \$249.2 billion in 2000, making China the seventh largest exporter in the world. In addition, foreign direct investment (FDI) inflows into China had grown more than tenfold from US \$3.5 billion in 1990 (about 10 per cent of all FDI flows to developing countries) to US \$40.77 billion in 2000 (17 per cent of all FDI inflows into developing countries)¹⁹.

ASEAN-CHINA economic relations have been growing dramatically, benefiting from the dynamism of their economies, the liberalization of their trade regimes and the modifications of their trade structure. It was noted that in the year 2000, ASEAN-CHINA trade totaled US \$39.5 billion. ASEAN's share in China's foreign merchandise trade had been continuously on the rise, increasing from 5.8 per cent in 1991 to 8.3 per cent in 2000. By then ASEAN was China's fifth biggest trading partner. Conversely, the share of China in ASEAN trade has grown from 2.1 per cent in 1994 to 3.9 per cent in 2000. By then China ranked sixth among the largest trading partners of ASEAN.

The potentials for further expanding these trade and investment links were apparent. In their respective self-study, both collective and individual, ASEAN and China were able to identify pre-existing measures that hampered their trade and investments. Appropriate measures could be and have since been taken to open up market opportunities to meet the trade and investment potentials between ASEAN and CHINA. In addition, China's accession to WTO would make, as it has indeed made, the Chinese economy more export market oriented and necessarily more efficient, more competitive and more attractive for foreign direct investment (FDI) in general and with better incentives for FDI from within ASEAN in particular.

¹⁹ See Forging Closer ASEAN-CHINA Economic Relations in the Twenty-First Century, id., Introduction, pp.4-6, and Section I. Current State of ASEAN-CHINA Economic Relations, pp.7-14.

With these objectives in mind and upon the recommendations based on the above joint report submitted by the ASEAN-CHINA Expert Group, a decision was reached, at the Summit Meeting between ASEAN and CHINA on 6 November 2001 in Bandar Seri Begawan, Brunei Darussalam, to establish, in principle as well as in actual practice, an ASEAN-CHINA Free Trade Area (ACFTA or in the *Alternate* CAFTA) within ten years for ASEAN Six (i.e. Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand), with appropriate flexibility of time frame including special and differential treatment for the newer ASEAN Member States (namely, Vietnam, Laos, Myanmar and Cambodia), complete with provision for an early harvest for the products and services identified in the list to be determined periodically by mutual consent among the Parties by means of an Additional Protocol or a Protocol to Amend²⁰.

In more ways than one, the time frame for ASEAN-CHINA FTA was dictated by other interlocking relations with different periods of time frame which had to be coordinated in a consistent global pattern. Within ASEAN itself, an earlier time frame was adopted for ASEAN FTA or AFTA for 10 years beginning 1 January 1993 following the Framework Agreement of 1992 for ASEAN Six, and within 15 years for ASEAN Ten. The implementation of AFTA was subsequently accelerated. Meanwhile, the Association of Asian Pacific Economic Cooperation (APEC) which embraces ASEAN Six and NAFTA together with Australia and New Zealand and Japan, Republic of Korea, China, Hong Kong and Taiwan, set the year 2020 as target date for elimination of all trade barriers as part and parcel of the global efforts to achieve freedom of inter-regional and cross-border movement for goods and services. Ten years from the year 2000 would take ASEAN-CHINA FTA up to the year 2010 fully to achieve Free Trade Area status, initially for ASEAN Six, and 2015 for ASEAN Ten, subject to supervening acceleration and application of early harvest to be determined from time to time.

(3) Framework Agreement of 2002 and its Protocol of 2003

²⁰ Article 8 of the 2002 Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People's Republic of China recalls the commitments of ASEAN and China to establish the ASEAN-CHINA FTA covering trade in goods by 2010 for Brunei, China, Indonesia, Malaysia, the Philippines, Singapore and Thailand, and by 2015 for the newer ASEAN Member States.

On 4 November 2002 ASEAN and CHINA followed up on their decision of 6 November 2001 taken at the Summit of Bandar Seri Begawan, Brunei Darussalam by concluding the Framework Agreement on the Comprehensive Economic Cooperation between ASEAN and the People's Republic of China (the 2002 Framework Agreement), signed by the Heads of State and Government of ASEAN and CHINA at Phnom Penh, Cambodia. This ASEAN-CHINA Framework Agreement came into force on 1 July 2003 for the Parties having completed their internal procedures by that date and for other Parties upon the date of the completion of their internal constitutional procedures²¹. The Parties to this Agreement are designated collectively as “the Parties”, or individually referring to an ASEAN Member State or to CHINA as a “Party”.

The objectives of the Framework Agreement are²² to:

- (a) strengthen and enhance economic, trade and investment opportunities between the Parties;
- (b) progressively liberalize and promote trade in goods and services as well as create a transparent, liberal and facilitative investment regime;
- (c) explore new areas and develop appropriate measures for closer economic co-operation between the Parties; and
- (d) facilitate the more effective economic integration of the newer ASEAN Member States and bridge the development gap among the Parties.

To these ends, measures for comprehensive economic cooperation have been adopted and put into operation, following a series of expeditious negotiations to establish appropriate mechanisms for the purpose of effective implementation of this Agreement.

The Agreement contains four Annexes²³:

²¹ See the Framework Agreement cited in Note 20 supra, Article 16 (1) Entry into Force, 1 July 2003.

²² Id., Article I: Objectives.

²³ See id., Annexes 1, 2, 3 and 4.

1. Exclusion List of a Party for products excluded from the early harvest programme;
2. Specific products covered by the early harvest programme;
3. Three categories of products for tariff elimination and reduction with time frames; and
4. Activities under Article 6 (5), e.g., the Singapore-Kunming Rail Link and Bangkok-Kunming Highway Projects.

At the Bali Summit in October 2003 ASEAN and CHINA adopted the ASEAN Protocol to amend the Framework Agreement²⁴. It should be noted at this point that by that time it has become an established practice of ASEAN as a regional organization to conclude treaties, agreements and framework agreements among member States and with third States, which are subject to subsequent additional protocols, expressly to “amend”. According to ASEAN traditions, this practice is designed to allow subsequent clarifications, revision, rectifications or corrections and modifications to add to or depart from the original agreements concluded. The practice is time-honored and based on the principles of ASEAN solidarity, ASEAN resilience and flexibility by which ASEAN has been known for its ability to adjust, adapt and accommodate itself, collectively or individually even differentially to the changing scenario and circumstances through the passage of time, in accordance with the capability and capacity of each Member State ultimately and effectively to implement the avowed object and purpose of a given treaty, or any programme of action designated as an ASEAN project, under active but gradual and progressive implementation.

The 2003 Protocol to Amend the Framework Agreement seeks to clarify the implementation of the provisions of the Framework Agreement and to specify with further details the terms and conditions for the acceleration of tariff reduction and/or elimination of the covered products. In particular, the Protocol adds further precision regarding the pace

²⁴ See Introduction to the Protocol to Amend the 2002 Framework Agreement, 6 October 2003, by Sompong Sucharitkul in *International Legal Materials*, 2004, pp.1-2.

at which a Party may accelerate its tariff reduction and/or elimination under a provision of the Framework Agreement in relation to the rest of the Parties, on a unilateral basis, in accordance with the established practice and in the spirit of ASEAN solidarity. In this manner, one or more ASEAN Parties may conduct independent negotiations and enter into a bilateral or multilateral acceleration arrangement with China to further accelerate their tariff reduction and/or elimination. Such is the *modus operandi* known to ASEAN member States, to initiate implementation of an ASEAN project or Agreement at the earliest date without awaiting any indication of readiness or preparedness on the part of other partners, thereby creating a snowballing effect towards achieving the desired objective in a shorter time frame, regardless of consensus, let alone unanimity, which could hamper or delay ASEAN collective endeavors. The 2003 Protocol to amend the 2002 Framework Agreement is principally concerned with the Early Harvest Program (EHP). According to this program, the tariffs of China and ASEAN agricultural products will be reduced to below 10 per cent in 2004, below 5 per cent in 2005, and to zero in 2006. The Protocol constitutes a special amendment to the basic agreement²⁵.

(4) Follow-Up Agreements of the 2002 ASEAN-CHINA Framework Agreement for Closer Economic Cooperation

On 11 November 2004, at Vientiane in Laos, two significant Agreements were concluded between ASEAN and China pursuant to the 2002 Framework Agreement, namely the Agreement on Trade in Goods²⁶ and the Agreement on Dispute Settlement Mechanism²⁷. These two follow-up Agreements may be briefly noted.

Under Article 3 of the Framework Agreement, ASEAN and China entered into negotiations in which duties and other restrictive regulations of commerce are to be eliminated on substantially all trade in goods between the Parties. This was achieved within

²⁵ The ASEAN Secretariat and the Ministry of Foreign Trade and Economic Cooperation of China jointly provide secretariat support for the negotiations between ASEAN States and China.

²⁶ See Agreement on Trade in Goods pursuant to the 2002 Framework Agreement, 9 November 2004, <http://www.aseansec.org/16647.htm>.

²⁷ See Agreement on Dispute Settlement Mechanism pursuant to the 2002 Framework Agreement, 9 November 2004, <http://www.aseansec.org/16636.htm>.

the agreed time frame. The Parties also proceeded with negotiations in earnest with the view to expanding trade in services under Article 4 of the Framework Agreement progressively to liberalize trade in services with substantial coverage for a wide variety of the service sectors. Other areas of economic cooperation are covered in Article 7, including principally five priority sectors, namely, agriculture, information and communication technology, human resources development, investment and Mekong River Basin development. In addition, the Framework Agreement also embraces important areas such as banking, finance, tourism, industrial cooperation, transport, telecommunications, intellectual property rights, small and medium enterprises (SMEs), environment, biotechnology, fishery, forestry products, mining, energy and sub-regional development.

The Agreement on Dispute Settlement Mechanism envisaged under Article 11 of the Framework Agreement was under negotiations by the ASEAN-CHINA Trade Negotiation Committee (ASEAN-CHINA TNC) institutionalized under Article 12. This Agreement applies to disputes arising under the Framework Agreement and its Annexes. It provides for consultations under Article 4, aimed at preventing further deterioration of the dispute if not indeed pre-empting the potential dispute from ever arising. Conciliation and Mediation are alternative methods of dispute resolution envisaged in Article 5. While the Agreement contains no provision on judicial settlement or litigation, a system of ad hoc arbitration by appointing Arbitral Tribunals within a reasonable time frame appears to be an agreed method of mandatory dispute resolution after all other means have failed to yield positive results. An extraordinary feature in the ASEAN-CHINA dispute settlement mechanisms lies in the provision of Article 7 (2) which stipulates that “if any party fails to appoint an arbitrator within the permitted time limit, then the arbitrator appointed by the other party to the dispute shall act as the sole arbitrator of the tribunal”²⁸. Unless otherwise

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See the 2004 Agreement on Dispute Settlement Mechanism, Article 7: Composition of Arbitral Tribunals. Paragraph 2 requires the complaining party to appoint an arbitrator within 20 days of the receipt of the request for appointment of the arbitral tribunal and the party complained against to appoint an arbitrator within 30 days of its receipt of the request for appointment of the arbitral tribunal. If any party to the dispute, either the Claimant or the Respondent, fails to appoint an arbitrator within such period, then the arbitrator appointed by the other party to the dispute will serve as the sole arbitrator of the tribunal. There would be no need to have a second arbitrator, let alone a third to serve as chair, as otherwise envisaged under Paragraphs 1 and 3 of the Agreement.

provided in this Agreement or agreed by the parties to the dispute, the arbitral tribunal shall have three members. The terms of reference of the tribunal include the power to examine the matter referred to it and to make findings, determinations and recommendations provided for in the Framework Agreement, and to decide in accordance with the Framework Agreement and the rules of international law applicable between the parties to the dispute. The tribunal makes decision by consensus (Article 8). Its decision is final and binding on the parties to the dispute. The tribunal meets in closed session and the parties may be present at the meetings only when invited by the tribunal to appear before it (Article 9).

III. THE SECOND CAFTA EXPO AT NANNING IN 2005

At the Seventh ASEAN-CHINA Summit Meeting in Bali, Indonesia, on 8 October 2003, H.E. Wen Jiabao, Prime Minister of China proposed to host the first CHINA-ASEAN Exposition in Nanning, Guangxi Zhuang Autonomous Region in 2004²⁹. This proposal was received with warm unanimous response from all ASEAN member States. Thus the First CAFTA Exposition took place at Nanning as planned in November 2004. At the ASEAN-CHINA Summit Meeting in Vientiane, Lao People's Democratic Republic, on 29 November 2004, the ASEAN leaders took occasion to congratulate China for the successful holding of the First ASEAN-CHINA Expo 2004 at Nanning earlier that same month³⁰.

²⁹

See Joint Declaration of the Heads of State and Government of ASEAN Nations and China on Strategic Partnership for Peace and Prosperity on 8 October 2003, declaring the purpose of a strategic partnership for peace and prosperity to be "to foster friendly relations, mutually beneficial cooperation and good neighborliness between ASEAN and China by deepening and expanding ASEAN-CHINA cooperative relations in a comprehensive manner in the 21st century, thereby contributing further to the region's long-term peace, development and cooperation. This strategic partnership is non-aligned, non-military, Non-exclusive, and does not present the participants from developing their all-directional ties of friendship and cooperation with others." <http://www.aseansec.org/15266.htm>.

³⁰

See Chairman's Statement of the 8th ASEAN+CHINA Summit, Vientiane, 29 November 2004: "Deepening ASEAN-CHINA Strategic Partnership". Paragraph 11 notes that ASEAN leaders congratulated China for the successful holding of the ASEAN-CHINA EXPO in Nanning earlier that month.

The Second CHINA-ASEAN Expo was held in Nanning on 18-22 October 2005. To fulfill the avowed objectives of the Expo, notably to provide ample opportunities for business contacts and connections, to ensure improved services, transparency, orderliness and efficacy in business management and administration, special attention was paid to enhance the participation of meaningful business sectors, including their chief executive officers (CEOs). The Exposition was so organized as to serve as a convenient platform to launch a program of action to expand trade in goods and services, to enhance mutual investment cooperation, and to provide a summit forum for cultural and legal exchanges between China and ASEAN countries for the general benefit of the whole world beyond the confines of ASEAN and China³¹.

The First Expo propelled Guangxi into a strategic position in the launching of a joint ASEAN-CHINA project as a step in the implementation of the impending CHINA-ASEAN Free Trade Area. Guangxi was projected as an open city, a favorable destination for investment inflows. It also brought new opportunities and widened the scope of economic cooperation and market exploration between ASEAN and CHINA. From January to July 2005, it is reported that the trade volume between Guangxi and ASEAN increased more than 28 per cent over the corresponding period in the year 2004. ASEAN was fast becoming the largest trading partner of Guangxi. In the first six months of the year 2005, bilateral trade between CHINA and ASEAN rose by 25 per cent, which has easily made ASEAN the fourth largest trading partner of China³².

The Second Exposition at Nanning has assumed a much larger scale than its predecessor. For one thing, both China and her ASEAN counterparts have learned their lessons in active cooperation and started to discover, to their incredulous amazement, the

³¹ Id., paragraph 16, the ASEAN leaders noted with satisfaction the admission of Cambodia, Laos and Myanmar to the ASIA-EUROPE Meeting (ASEM) and expressed appreciation to China for her support for the three ASEAN Member Countries. Paragraph 17 noted ASEAN's support for Asia's turn to assume the position of UN Secretary-General and ASEAN's endorsement of the candidacy of the Thai Foreign Minister for this position.

³² See an article by LU Bing, Deputy-Director of CAEXPO 2005 Organizing Committee, Governor of Guangxi Zhuang Autonomous Region, titled, "*Sharing Opportunities and Achieving Common Development*", published in CHINA-ASEAN Exposition, 18 October 2005, <http://www.caem.com.cn>, pp.13-15, translated by Liu Xueqin.

infinite depth and the vast variety of potentials for the development of their combined economic strength for sustainable bilateral trade, as much as for the mutual benefits and advantages in encouraging and maintaining freer reciprocal direct investment flows in selective productive industrial developments.

A plausible way to present a brief but comprehensive report of the Second CAFTA Expo at Nanning is to highlight some of the salient features of the Exposition of 2005 in three separate but interconnected dimensions. The Second CAFTA Exposition at Nanning was so designed and organized as to achieve three separate goals by dividing the program of events into three simultaneous but coordinated different functions, namely

1. The Exposition structured to cover the magnitude and variety of goods and services available in the ASEAN countries and in China;

2. The Second CHINA-ASEAN Business and Investment Summit (CABIS) to promote and facilitate closer trade and business ventures as well as direct investment flows across the ASEAN-Chinese frontiers; and

3. The Second CAFTA Legal Affairs Forum to serve as a point of contact for lawyers and legal advisers of ASEAN nations as well as the People's Republic of China to meet with their counterparts, members of the Guangxi Association of Lawyers for an exchange of useful and practical information on the nature and types of legal services needed which should be made available for the smooth implementation of closer economic cooperation in the CAFTA Area.

It is proposed in this presentation to give first and foremost an overview of the event as an exhibition of goods and services on display with the view to further expanding intra-CHINA-ASEAN trade in goods and services. In the second place, the report will comment on the Second CHINA-ASEAN Business and Investment Summit (CABIS). Finally, the report will center upon some aspects of the Second CHINA-ASEAN Legal Affairs Forum. It will be seen whether the ensuing report will lend itself to any concluding observation.

(1) The Second CHINA-ASEAN Exposition 2005 at Nanning

To give an overview of the Expo 2005, it is essential to ascertain the scope of the exhibition. The Second CAFTA Exposition was conceived as a showcase to display available merchandises and services within the CAFTA Area, not only for export between ASEAN and CHINA, but also outside and beyond, especially within the ASEAN + Three, in particular Japan and the Republic of Korea. Thus, Japan and South Korea were also invited to visit the Expo site with the view to their actual participation in the business and investment ventures at Guangxi in China³³.

The Second Expo started off on a grand scale, with 16 halls or pavilions in 2005 as opposed to 9 in the year 2004, and with more than 3500 booths compared with 2500 in the previous year. More than 3000 prospective buyers and importers from ASEAN, Japan and Korea attended the Expo among the 20,000 visitors. Some 274 investment projects were collected from ASEAN and other countries to enhance further business opportunities for enterprises that participated in the Expo to share the benefits arising as the result of the advent of CHINA-ASEAN Free Trade Area³⁴.

The exhibits of the First Expo were selected from 11 categories, while the selection for the Second Expo was limited to only 5 categories. Machinery and equipments top the five categories, and China took up 788 booths. Light industrial products and farm produces rank second and third in the number of booths reserved for display, and China occupied 235 and 231 booths respectively. Enterprises from ASEAN countries took up 126 booths for light industrial products and 65 for farm produces. Other categories of commodities on display included foodstuffs and packaging machines, automobiles, motorcycles and related fittings, not to mention handicrafts and other regional traditional products³⁵.

³³ See a statement by Mr. Li Jinzao, Vice-Chairman and Secretary-General of the Organizing Committee of the Second CAFTA EXPO 2005, Deputy Governor of Guangxi, in CHINA-ASEAN Exposition, *"Elaboration of the Seven Characteristics of the Second CHINA-ASEAN EXPO,"* excerpts, id. at pp.16-19.

³⁴ Id., at p.17.

³⁵ Id., at p.17. For the setting and categories of Exhibition Pavilions, see also id., at p, 23, translated by Lin Qiuming.

Two important events preceded the actual opening of the Exhibits: namely, the Welcoming Banquet on the evening before the opening day, and the Opening Ceremony of the Second CAFTA Expo 2005.

The Welcoming Banquet for the Second CAFTA Expo and the Second CHINA-ASEAN Business and Investment Summit was the first of the major events on 18 October 2005 at 6:00 p.m. that set the stage for the informal convivial get-together among the Chinese hosts and the invited ASEAN guests. For some invitees, the occasion afforded the first opportunity to encounter their Chinese counterparts to break the ice and to initiate the process of matching of the trade partners and projects for investments and business enterprises as well as possible joint ventures. For other visitors, the event served as a prelude to further talks, exchanges and consultations among the exporters and importers and entrepreneurs from the combined ASEAN Chamber of Commerce and their local and regional partners. Mingling with businessmen and prospective investors in selected industries were members of the Chinese mass media to feed the news to the public at large through television broadcast and local as well as international newspapers. A good coverage was readily visible the same evening and the ensuing morning³⁶.

The second most memorable event was the official opening ceremony of the Second CAFTA Expo attended by Chinese and ASEAN Ministers of rank. The Vice-President of the People's Republic of China, H.E. Mr. Zeng Qinghong inaugurated the opening of the Exposition with the crossing of the two rainbows, symbolizing the construction of a bridge of communication and cooperation between ten ASEAN nations and one China, ten + one, the bond of friendship being facilitated by the CHINA-ASEAN Expo. Addresses were given by Mr. Bo Xilai, Minister of Commerce of China, Mr. Lu Bing, Governor of Guangxi Zhuang Autonomous Region, and Mr. Ong Keng Yong, Secretary-General of ASEAN³⁷.

³⁶ The Legal Daily was also represented at the Welcome Banquet, where preliminary interviews and photograph-taking were held for television and morning news.

³⁷ H.E. Ong Keng Yong Secretary-General of ASEAN noted that since the entry into force of ASEAN-CHINA Agreement on Trade in Goods on 9 September 2004 until July 2005, the volume of trade between

The presidents of the various chambers of commerce affixed the seal of cooperation to symbolize the limitless business opportunities following the Expo 2005 and the continuing growth of trading and economic activities between China and ASEAN nations. A short film showing the convergence of the “Water of Cooperation” collected from the mainstream rivers of the 11 countries and merged into one mighty river, symbolizing the strength of the combined ASEAN-CHINA market prompted by the emerging CHINA-ASEAN Free Trade Area and accelerated by the Second CAFTA Expo 2005 at Nanning. The inauguration ceremony also symbolized the perennial character of CAFTA Expo which is expected to remain a permanent feature in ASEAN-CHINA economic cooperation for the foreseeable future³⁸.

China has come a long way in the utilization of her best endeavor to improve and perfect the environment of the Expo 2005 as the host country, in particular Guangxi as the regional host and a gateway to enhance two-way trade and investment between China and ASEAN as well as Japan and Korea. New measures were adopted to optimize auxiliary services and to satisfy participants. Fifteen new hotels were completed in time for the accommodation of visitors from ASEAN countries. New facilities were installed to coordinate overseas travels, including security and fire prevention as well as immigration services and inspection of goods for display at the Exposition.

Another project worthy of mention in this connection is the special promotion of the “City of Charm” for each of the ASEAN countries as well as for China, to promote not only cultural exchanges but also tourism as an invisible export trade. The following cities have been designated as “City of Charm” by their respective Government³⁹:

“Bandar Seri Begawan” for Brunei Darussalam,

“Siem Reap” for Cambodia,

ASEAN and China has risen to US\$ 105.9 billion. Together ASEAN and China now have 1.85 billion peoples, representing the fourth largest trading partner in the world with US\$ 2.5 trillion GDP.

³⁸

The convergence of the eleven mainstreams from the 10+1 CAFTA Countries as presented by the film was very vivid, impressive and realistic in image-making. There can be no denying that union is strength indeed.

³⁹

See pages 26 to 57 of a business travel magazine, CHINA-ASEAN EXPO No. 10 of 18 October 2005, cited at Note 32 supra.

“Jakarta” for Indonesia,
“Luang Prabang” for Laos,
“Putra Jaya” for Malaysia,
“Cebu” for the Philippines,
“Singapore” for the Republic of Singapore,
“Chiang Mai” for Thailand,
“Hanoi” for Vietnam, and
“Beijing” for China.

Exhibition Pavilions were allocated to each participating nation. There were as such distinct national pavilions for the ASEAN countries and China. Each country selected its representative cities or regions and displayed achievements and business opportunities in the fields of trade, tourism, investment, education, science and technology, culture and human resources. For instance, Thailand opened one booth for Payap University in Chiang Mai and another for Ramkhamhaeng University in Bangkok⁴⁰.

The Commodity Trade Pavilions were grouped under five headings⁴¹:

1. Machinery and Equipments,
2. Electronics and Household Appliances,
3. Hardware and Construction Materials,
4. Light Industry Products and Handicrafts, and
5. Agricultural Products and Food.

The Expo also exhibited projects for investment attraction and international economic cooperation as well as advanced technologies. The designation of the eleven

⁴⁰ Cultural and educational exchanges appear to have been included in the draft agreement on trade in services that ASEAN Countries and CHINA have been negotiating and will soon be concluded.

⁴¹ See CHINA-ASEAN Exposition Business Travel Magazine No. 10, at p. 23, II.: Commodity Trade Pavilion.

“Cities of Charm”, listed above, constituted part and parcel of the main theme of the Second CAFTA Expo which particularly highlighted these “Cities of Charm” for tourist attractions⁴².

(2) The Second CHINA-ASEAN Business and Investment Summit (CABIS)

At the First CHINA-ASEAN Business and Investment Summit at Nanning in 2004, 1255 participants from ASEAN countries and China, comprising leaders, ministers of commerce, senior officials, entrepreneurs and representative of industrial and business circles, gathered together to discuss and explore ways and means to enhance economic cooperation under the theme: “Promoting Mutually Beneficial Economic Cooperation” and “Searching for Common Development”⁴³.

The Second CABIS Summit opened on 20 October 2002, aptly enough with the policy statements declared in the keynote addresses made by the eleven leaders, including economic and trade ministers, a prime minister and deputy premiers of ASEAN countries, and the Minister of Commerce of China. The addresses focused on the theme “China and the ASEAN Countries: Market Opening and Exploring” and the establishment of CHINA-ASEAN Free Trade Area⁴⁴.

It is difficult to do justice to the significance of the contents of the keynote addresses delivered by the leaders of ASEAN countries and the Minister of Commerce of China on that auspicious occasion. Participants were likely to have a favorable and encouraging impression as a whole. There appeared to be a clear consensus on the need to go ahead with the plan of action for closer economic cooperation and even integration beyond the Free Trade Area soon to be implemented. The Minister of Commerce of Thailand did not hide the fact that he shared his original family name with his Chinese

⁴² The 10+1 Cities of Charm selected are listed by their respective Government, as cited in Note 39 supra.

⁴³ See “Prelude” to the Second CHIBA-ASEAN Business and Investment Summit, by CABIS Secretariat.

⁴⁴ Among the speakers should be mentioned H.E General Soe Win, Prime Minister of Myanmar, H.E. Nguyen Tan Dung, Deputy Prime Minister of Vietnam, and H.E Choummaly Saygnasone, Vice President of Laos.

counterpart⁴⁵. The majority of members of the ASEAN Chamber of Commerce seemed to speak fluent Mandarin. The Deputy-Minister of Finance from Malaysia represented the Chinese minorities in her country⁴⁶.

Statistics may speak more eloquently than mere statements of policy, however pleasant and impressive. The ASEAN-CHINA Free Trade Area not only accommodates the largest population of 1.85 billion, but also has a total GDP of about 2 trillion US dollars with a total trade volume of 12 trillion US dollars. In 2004, China maintained a surplus account in foreign currencies of US \$800 billion. The President of China, H.E. Hu Jintao indicated with confidence on his visit to South-East Asia in April 2005 that the annual two-way trade between ASEAN and China in future years would exceed 200 billion US dollars, expected in the year 2005⁴⁷.

In terms of ASEAN investments in China, by the end of December 2004, statistics show that ASEAN direct investments in China to date account for 6.29 per cent of total direct foreign investments in China. Singapore clearly tops the ASEAN list with 25.539 billion US dollars, followed by Malaysia at 3.471 US dollars, Thailand at 2.727 billion US dollars, the Philippines at 1.878 billion US dollars, Indonesia at 1.373 billion US dollars, Brunei at 169.89 million US dollars, Cambodia at 78.62 million US dollars, Myanmar at 65.15 million US dollars and Laos at 16.06 million US dollars.⁴⁸

Singapore has by far exceeded the rest of ASEAN countries in the total amount of direct investment in China, thanks in no small measure to Singapore's initial interest in concluding a bilateral investment treaty (BIT) with China as early as 1985, the same year as

⁴⁵ See the statement by H.E. Somkid Jatusripitak, Deputy Prime Minister and Minister of Commerce of Thailand.

⁴⁶ See an interview with Dato' Dr. Ng Yen Yen, Deputy Finance Minister of Malaysia and Chairperson of Women Section of the Federation of the Chinese Associations of Malaysia, in CHINA-ASEAN Exposition, Business Travel Magazine No.10, at pp.69-71.

⁴⁷ See an interesting paper by Mr. Xu Ningning, a Chinese scholar in business relations in South-East Asia, entitled, " *Analysis of the Prospect of CHINA-ASEAN Free Trade Area*," Collected Works of the Second CAFTA Legal Affairs Forum, pp.52-61.

⁴⁸ Statistics of ASEAN's Direct Investment in China ending in December 2004, provided by the Department of Foreign Investment Administration of the Ministry of Commerce of China, cited by Xu Ningning, id. at p.61.

Thailand and three years before Malaysia. It should be noted that Singapore has the closest cultural and linguistic ties with China, while Malaysia has the largest Chinese minorities. On the other hand, Thailand had long assimilated and integrated Chinese immigrants into the Thai mainstream population⁴⁹.

China's direct investments in ASEAN countries are still unrecorded, but as far as reported apparently negligible by comparison. However, the two-way investment inflows should not be precluded at this juncture, as China is fast developing as a world economic power. Nonetheless, there appears to be an encouraging sign of China's awareness of her role as a regional economic partner to make an appreciable contribution to support the cause of her ASEAN partners. Recently, China has indicated her intention to contribute another 5 million US dollars to the ASEAN-CHINA Cooperation Fund in 2005⁵⁰.

China has been relentless in her efforts to attract foreign direct investments. To this end, China has created in Nanning about one kilometer from the Exhibition Center a CHINA-ASEAN International Business Zone to function as a core zone of a new financial district for business offices, hotels and exhibition facilities together with a special zone for liaison offices for individual ASEAN countries⁵¹.

In addition, a brand new CHINA-ASEAN Economic Park is taking off in Nanning complete with workshops, factories and infrastructure including means of transport for the flow of goods to the world market. The Park is intended to serve as an important window and transit passage for economic and trade cooperation within the CHINA-ASEAN Free Trade Area, another platform to promote economic exchanges, technological cooperation and cultural relations between China and ASEAN countries. It is designed to serve as a

⁴⁹ Conversely, it should be noted that in Guangxi Zhuang Autonomous Region there are fifteen million Thai or TAI minority and eighteen million of the same in Yunnan, an adjacent region in which ASEAN enjoys the largest share in the total two-way trade.

⁵⁰ See paragraph 15 of the Chairman's Statement of the 8th ASEAN + CHINA Summit, Vientiane, 29 November 2004, cited in Note 30 supra.

⁵¹ See CHINA-ASEAN Exposition, Business Travel Magazine No. 10, "*CHIN-ASEAN International Business Zone*", up to now zones have been set up for the 10 ASEAN Countries, and Japan, South Korea and the Hong Kong and Macau Special Administrative Regions (SARs). Six main roads are being constructed or expanded to serve these zones.

hub and a bridge to strengthen economic and technological coordination within the CHINA-ASEAN Free Trade Area⁵².

This Economic Park is strategically located near Nanning with abundant tourist resources, a placid lake and a large forest. It has three inner parks and one industrial park. It was designed in consultation with Singapore State and City Planning Consultants to fulfill the need for economic and trade cooperation and to promote complementarity, thereby yielding mutual benefits and common prosperity. The comprehensive industrial park covers an area of 80 square kilometers with tourist resort and necessary amenities. It is supported by various preferential policies. The Park portends a bright future for trade and economic collaboration⁵³.

China's economic success story is due largely to the collective energy and industrial discipline of the Chinese work force and man power, guided by ambitious but conservative and tireless policies of progressive economic development. In the period of three days during the Business and Investment Summit on 19-22 October 2005 many fruitful and eventful group-meetings were held, not only for networking, but more practically for negotiation sessions, culminating in contract signing ceremonies of key projects among Provinces and Cities in China and the ASEAN countries. A Forum of Industry and Commercial Elites was convened side by side with a Conference on the Investment Environment of China and ASEAN Countries. Press Conferences followed the Global Purchasing Conference of Motorcycles and Parts as well as Theme Seminars on Investment and Partnership Projects⁵⁴.

Guests and Participants were entertained by two evening shows: first on the 19 October in honor of the Inauguration of the Expo Opening Ceremony of the International

⁵² Id., pp.103-106, "*CHINA-ASEAN Economic Park Taking Off*," as depicted in the caption: "*with the wings of development, flying the blue sky like an eagle*".

⁵³ See Zhao Zhao, Zhao Weihui, id., at p. 106, portraying the Economic Park as an attractive location for foreign and domestic investors with favorable environment, preferential policies and high efficiency of innovative mechanism to facilitate investment for industrial production of competitive merchandises in full cooperation of the indigenous population. Infrastructures currently being put in place will be exceedingly investment friendly.

⁵⁴ See CABIS 2005 Agenda for 19 and 20 October 2005.

Art Festivals and Folk Songs⁵⁵, and at the end on 22 October in honor of the Conclusion of the CAFTA Expo Splendid Gathering in Nanning in 2005⁵⁶.

(3) The Second CHINA-ASEAN Free Trade Area Legal Affairs Forum

The Second CAFTA Legal Affairs Forum was convened on 20-22 October 2005, following the keynote addresses of the leaders of the eleven countries of CAFTA. It constituted an inherent part of the Second CAFTA Expo and the Second CABIS Summit 2005. The Forum sessions were successively held simultaneously with other activities and events connected with the Expo and the Summit. The Second Forum was hosted by CAEXPO Secretariat, All China Lawyers Association, the Legal Daily and Guangxi Lawyers Association. It is expected that from next year, competent legislative and judicial authorities from CAFTA countries will be invited to co-host the Third Forum.

For the current Forum, participants have been invited from national and international officials, arbitrators, legal experts, outstanding lawyers and CEOs of celebrated brands and enterprises. One of the objectives of the Forum was principally to advance the construction of CAFTA legal system so as to be able to bridge the existing gaps between national legislation and internal regulations on the one hand and international customs and practices on the other. The Forum was intended to afford an opportunity and to provide a foyer for an exchange of business news and information on legal services. It now serves as a clearing house to explore and gather opinions on all issues connected with trade in goods and services in each of the CAFTA jurisdictions, and on the availability of various types of dispute settlement mechanisms within the CHINA-ASEAN Free Trade Area.

The ultimate aim of this Forum is the construction of a collective legal system, to define and identify legal issues, to tackle and minimize legal problems, and to prevent, manage and settle legal disputes, connected with intra-CAFTA trade in goods and services

⁵⁵ See id., Agenda for 19 October 2005, at 20.00-22:30 hours, Opening Ceremony of Nanning International Folk Song Festival, at the Folk Song Square, Nanning. The folk songs included “Beautiful Jasmine Flower”, “Let the World be Filled with Love” and several other folk songs by Asian and European singers and orchestras.

⁵⁶ On 22 October 2005 at 20:00 hours, Evening Show in Honor of the Conclusion of the Second CAFTA Expo Splendid South-East Asia Gathering in Nanning 2005.

and reciprocal direct investments between ASEAN nations and China. The avowed theme of the Forum as declared by its Organizing Committee Members is “Regional Economy and Construction of Legal System”⁵⁷.

Leading members of the lawyers association of Guangxi and distinguished members of the Governance of the Region and of the City of Nanning, including the Procuratorate, the District Attorney and the Public Defender’s Office, all contributed to the preparatory works of the Forum with their written reports and comments on several aspects of the existing legal frameworks and their shortcomings. Their written observations were fully supplemented by their oral presentations at the preliminary opening session of the Forum.⁵⁸

The introductory remarks by the legal scholars and practitioners from the Organizing Committee of the host institutions were followed by a short recess intended for group photographing of the members of the Forum. A working group was convened to hear the keynote address from the first ASEAN Secretary-General from Thailand who reminisced on the origin of ASEAN and marveled at the ultimate realization of his dream of implementing to-day’s legal consultations between ASEAN of Ten and China, a world economic power, as equal trading partners in search for ways and means to improve their economic well-being and prosperity through fair and competitive transnational commercial relations and mutually beneficial cross-border *inter se* investments. A lively question and answer session followed suite⁵⁹.

A few more succeeding working sessions of the Legal Affairs Forum were reconvened to examine and explore legal issues further in depth in order better to be able to meet head on the challenges that lie ahead in the implementation of the proposed CHINA-ASEAN Free Trade Area and closer economic integration.

⁵⁷ See the Collected Works of the China-ASEAN Legal Affairs Forum, by the Organizing Committee of the Legal Affairs Forum, 19-21 October 2005, Preface, p.2, Foreword, p.3 and Theme of the Forum, p.4.

⁵⁸ See e.g., “*The Work of the Procuratorate on the Background of CHINA-ASEAN Free Trade Area*”, a paper by Chen Pusheng, id., at pp.21-27, and another by Yang Liyan, id., at pp.28-35.

⁵⁹ See the Keynote Address by Ambassador Sompong Sucharitkul, on file with the reporter. A number of questions were raised regarding the flexibility of the modus operandi of ASEAN and appropriate answers were also given in response.

(a) International Instruments Regulating CHINA-ASEAN Economic Relations

It has become apparent to the Legal Affairs Forum that initial international instruments concluded between China and ASEAN countries have been put in place, notably the 2002 Framework Agreement and its Protocol of 2003, the 2004 Agreement for Trade in Goods and the 2004 Agreement on Dispute Settlement Mechanism⁶⁰. These instruments constitute a solid institutional foundation for closer economic cooperation between China and ASEAN as a whole as well as for each of the ASEAN member nations. The next instrument in the pipe-line is the ASEAN-CHINA Agreement on Trade in Services now under active negotiations and in the final process of adoption of an agreed text.

At the global level, trade relations between CHINA and ASEAN countries since China's accession in 2001 to the World Trade Organization (WTO) in Geneva have been regulated by WTO for ASEAN nations already members of that world organization, supplemented as need be by specific bilateral trade agreements with individual ASEAN countries⁶¹.

For investment protection, China has ratified the Washington Convention of 1965 since 7 January 1993⁶². So indeed have most of ASEAN countries⁶³. As such, investments in the China-ASEAN Area are in general covered by the 1965 Convention establishing the International Centre for the Settlement of Investment Dispute (ICSID). However,

⁶⁰ See the Collected Works of the Second CAFTA Legal Affairs Forum, at pp.13-20, "*Comprehensive Cooperation with ASEAN Countries and Dispute Settlement Mechanism in a Free Trade Area*", a paper by Zhang Shuguo. See also id., at pp.57-61, a paper by Xu Ningning, "*Analysis of Prospect of China-ASEAN Free Trade Area*".

⁶¹ See the Plan of Action (2005-2010) to Implement the Joint Declaration on ASEAN-CHINA Strategic Partnership for Peace and Prosperity, 4.4: Cooperation within the World Trade Organization (WTO) <http://www.aseansec.org/16806.htm>.

⁶² See ICSID Annual Report 2005, Annex 1: Contracting States and Other Signatories of the Washington Convention of 1965, pp.11-14, China, entry into force 6 February 1993.

⁶³ Id. pp.11-14; except for Laos and Vietnam, ASEAN countries have signed and except for Thailand have also ratified the Washington Convention of 1965.

jurisdiction of ICSID depends in each case on the actual consent given specifically for the dispute submitted or to be submitted to the Centre for final or eventual settlement.

(b) Bilateral Agreements

As noted above, international conventions are binding on China and ASEAN countries at the global and/or regional level in the context of trade and investment relations. These international instruments need further bilateral agreements or arrangement to implement internationally agreed norms to the fullest extent possible, depending on the needs and requirements of each of the ASEAN countries vis-à-vis China.

For instance, for trade in goods under Article 6 of the 2002 Framework Agreement, there is no exclusion list for early harvest in Annex 1 of the 2003 Protocol for Brunei, Indonesia, Myanmar, Singapore and Thailand, whereas several items are included in the exclusion list for Cambodia and Vietnam. For Malaysia, Laos and the Philippines negotiations for exclusion lists were subsequently concluded⁶⁴.

It should be emphasized, as was earlier noted, that to provide incentives and guarantee of protection for ASEAN direct investments in China, a series of bilateral investment treaties (BIT) have been in operation between China and all but one of ASEAN countries, namely, in 1985 for Thailand and Singapore, in 1988 for Malaysia, in 1992 for the Philippines, in 1993 for Laos, in 1994 for Indonesia, in 1996 for Cambodia, and in 2000 for Brunei⁶⁵. A draft agreement is under negotiation with Myanmar. These bilateral agreements invariable open the door for investors to insist on prior consent on the part of China as the host State to submit prospective investment disputes to the dispute settlement mechanism provided by the ICSID Convention of 1965. This is in addition to the dispute

⁶⁴ See the 2003 Protocol to Amend the 2004 Framework Agreement.

⁶⁵ See e.g., *Bilateral Investment Treaties 1959-1991*, UN Centre on Transnational Corporations and International Chamber of Commerce, UN, New York, 1992, at p. 18 *China with Countries, Dates of Signatures and Dates of Entry into Force*.

settlement mechanism provided by the 2004 CHINA-ASEAN Dispute Settlement Agreement⁶⁶.

(3) The Need for Mutual Appreciation of National Legal Structures

In the various working group sessions as well as in the preparatory working documents and preliminary legal studies submitted, attention has been concentrated on the construction of a common legal system to forge closer economic relations between China and ASEAN as a regional grouping. Observations have been made *en passant* regarding a lack of expertise on the applicable legal system of each of the ASEAN Countries, both collectively as a region and individually as a State Member of ASEAN. Chinese scholars appear to have recognized the existence of some hierarchies of legal systems in force within the ASEAN community. Immediately below the global level of the world legal order for international trade and investment under the auspices of the United Nations, ECOSOC, UNESCAP, UNCTAD, GATT, WTO and ICSID of the World Bank, economic cooperation and trade relations within the ASEAN community is governed by a set of ASEAN Treaties⁶⁷.

Ranking relatively high on the list of Constituent Instruments or basic laws of ASEAN are:

1. The Bangkok (ASEAN) Declaration of 8 August 1967;
2. The Kuala Lumpur Declaration of the Zone of Peace, Freedom and Neutrality, 27 November 1971;
3. The Declaration of ASEAN Concord, Bali Concord of 24 February 1976, following the very first ASEAN Summit, Bali, 23-24 February 1976;

⁶⁶ See the 2004 ASEAN-CHINA Agreement on Dispute Settlement Mechanism, <http://www.aseansec.org/16636.htm>.

⁶⁷ See The Constituent Instruments or Basic Laws of ASEAN listed immediately below.

4. The Treaty of Amity and Cooperation in South-East Asia, Bali, 24 February 1976;
5. The Protocol Amending the Treaty of Amity and Cooperation in South-East Asia, Manila, 15 December 1987;
6. The Manila Declaration of 1987, 15 December 1987;
7. The Bangkok Declaration of ASEAN Summit, 15 December 1995;
8. The Treaty on the South-East Asia Nuclear Weapons Free Zone, Bangkok 1995.
9. The ASEAN Vision 2020, Kuala Lumpur; 15 December 1997;
10. The Hanoi Plan of Actions (1999-2004); and
11. The Bali Concord II of 7 October 2003⁶⁸.

In addition to the ASEAN constituent instruments above listed, Chinese transnational legal professionals should start learning about the different legal systems prevailing in each of the ASEAN member countries, a combination and hybrid of common law, civil law, laws based on religious principles, Hindu, Islam and Buddhism as well as tribal customs and traditions⁶⁹. Many ASEAN national legal systems have evolved from multiple sources in actual practice and frequently composed of a mixture of more than two layers of superimposed legal and religious orders. Chinese legal counterparts will have to accumulate their wealth of South-East Asian legal knowledge to be able to embark with

⁶⁸ In addition to the instruments listed, see also the Tenth ASEAN Summit, Vientiane, 29-30 November 2004 and the Eleventh ASEAN Summit, Kuala Lumpur, 12-14 December 2005.

⁶⁹ See Cleveringa Inaugural Lecture: International Law and International Relations in a Pluriform World, by Sompong Sucharitkul, Leiden, 24 November 1989. See also Nagendra Singh, *The Basic Concept of Universality and the Development of International Law* ", Hague Academy of International Law , The Future of International Law in a Multicultural World, 1984, pp.239-257.

greater confidence upon an ASEAN business venture. One alternative is to find an ASEAN partner for the joint-venture⁷⁰.

Conversely, ASEAN investors and business enterprises will have to learn considerably more to keep up with progressive legal developments in China. ASEAN leaders agreed in 2004 to recognize China as a full market economy with its legal implications⁷¹. Although the internal legal system of China still bears some traces of “socialist legality” with a central procuratorate functioning as the supreme Attorney General Office. The Constitution of the People’s Republic of China is the supreme law of the land, supplemented by constitutional regulations, and other administrative regulations from the State Council. In addition, there are also rules made by local authorities and departments, as well as Autonomous Regions and Special Administrative Regions, including laws enacted by special economic zones. The Chinese legal system includes also civil law, economic law, economic contracts law (Chinese and foreign), labor law, social security law, environmental law, criminal law and civil and criminal procedures. China’s International Economic and Trade Arbitration Commission (CIETAC) has been active in internal and international dispute settlement. As a consequence, ASEAN legal professionals will have just as much to learn from their Chinese counterparts⁷².

The Legal Affairs Forum appears to have started on the right footing, and seems to be well on a fast tract. The construction work to build a sound a solid CHINA ASEAN legal foundation and infrastructure has just begun. It would appear unwarranted, as at present advised, to proffer further comments on the ultimate outcome of this noble

⁷⁰ Likewise in the converse case an ASEAN investor in China invariably had to rely on legal advice and counsel from Chinese counterparts to be able to initiate a project on the right footing and not on the wrong track.

⁷¹ See the Chairman’s Statement on the 8th ASEAN-CHINA Summit, Vientiane, 29 November 2004, paragraph 15.

⁷² See the Joint Communiqué of the 6th ASEAN Law Ministers Meeting (ALAWMM), Hanoi, Vietnam, 19-30 September 2005. The ASEAN Law Ministers highlighted the importance of having a strong legal framework as a foundation for economic and social development and acknowledged the work and efforts of the ASEAN Senior Law Officials (ASLOM) in this direction. The Ministers also stressed the importance of strengthening cooperation on judicial assistance in civil and commercial matters.
<http://www.aseansec.org/17738.htm>.

undertaking. Suffice it at this point to make a well-founded wish for the success of their common endeavors.

IV. IMPACT OF CHINA-ASEAN EXPO 2005

While it may be as yet premature to attempt a realistic assessment of the impact of the Second CHINA-ASEAN Expo 2005, it is with cautious optimism that participants may be able to carry home with them an impression of a highly successful interchange of ideas about an infinite variety of products, of goods and services that will serve to enhance the complementarities of supplies and demands within this vast but not wholly explored region, engulfing China and ASEAN, and possibly beyond, with ASEAN + Three and their interlocking relations. Pending the eventual globalization of free trade⁷³, the combined ASEAN-Chinese share in the total world trade which appears to be constantly on the rise, already constitutes a substantial portion and a significant percentage of the total volume of world trade.

The impact of the current EXPO 2005 at Nanning cannot be overrated. Visitors touring the various exhibition pavilions could view with their own eyes the elevated qualities of the goods and services on display which also include a wide variety of works of arts and handicrafts, reflecting the creativity and ingenuity of their producers and craftsmen from the different regions, provinces and districts within the four corners of the CHINA-ASEAN World. Seeing is indeed believing.

V. A NEW BREED OF CHINESE-ASEAN LAWYERS

It is perchance a happy coincidence that out of this hectic regional gathering, a new breed of youthful legal scholars is born with a fervent and insatiable appetite for legal

⁷³

The ultimate objective of GATT and also of its successor, the WTO, is the final elimination of all tariff and non-tariff barriers. This is still unattainable in the immediate future.

researches and studies⁷⁴. The generation gap in the Chinese legal scholars appears to have been filled, complete with a Chinese President of the International Court of Justice who eloquently reported to the General Assembly and the Sixth Legal Committee for the third consecutive year⁷⁵.

Chinese legal scholars have indeed come a long way, certainly more than an extra mile from any of her Asian partners. It should be recalled that the ancient concept of law in China was unique in that law was conceived as a more flexible and loosely construed body of norms that appeared indistinguishable in varying form including regulation, directive and policy guidance. Between *ni* and *fa*, a rule of law can be found. The introduction of “socialist legality” did not help advance the progress of legal development. Nor did the “cultural revolution” serve to bridge the gap between “ancient law” in which justice seemed to have been inspired by the psychic forensic dreamland of Bao Bunjin and the exigencies of transparency demanded by Western expansionists in the nineteenth and early twentieth centuries⁷⁶. Of the three remaining independent Asian countries that managed to survive Western colonial expansion, Japan, Siam or Thailand and China, each surviving only with indelible scars of extraterritorial regimes, China was the last to emerge from the vestiges of the host of “unequal treaties”⁷⁷.

The need to update and reform Chinese law in every field appears to have necessitated the rebirth of Chinese legal scholarship and accelerated the process of progressive development of Chinese legislative enactments and modernization of Chinese legal system as part and parcel of the global legal order, once China has returned to the

⁷⁴ See S. Sucharitkul, *Rebirth of Chinese Legal Scholarship, with Regard to International Law*, Leiden Journal of International Law, Volume 3, pp.3-17.

⁷⁵ See the Addresses of H.E. President Shi of the International Court of Justice to the General Assembly of the United Nations and to the Sixth (Legal Committee) at the latest Annual Session of the United Nations in October 2005.

⁷⁶ See *The Rebirth of Chinese Scholarship*, cited in Note 74 supra, at p.14, 4.3. The Cultural Revolution (1966-1976); depression and lawlessness.

⁷⁷ See Sompong Sucharitkul, *Les perspectives asiatiques de l'évolution du droit international au seuil du troisième Millénaire*, Journal of the African Society of International and Comparative Law, London, 1998, a *Liber Amicorum* for Mohammed Bedjaoui.

international legal community. ASEAN stands a better chance of maintaining peaceful and fruitful relations of active cooperation with an equal and reasonable partner like China. The emerging generation of Chinese international legal professionals is most reassuring for the success of the CHINA-ASEAN venture.

This renaissance was not a byproduct of closer economic cooperation between China and ASEAN, rather it was a condition precedent to the creation of CAFTA. Without the new breed of Chinese professional lawyers, the task of constructing a common regional legal order would have been insuperable. Since the restoration of the legal profession and the system of lawyers association barely twenty five years ago, the population of the legal profession listed in the All China Lawyers Association has grown to 150,000 for the whole of China. In the Guangxi Autonomous Region, the lawyers association consists of some 2500 active members⁷⁸. Many regulations have been put in place for the practice of the legal profession and judicial service, including a code of ethics and guidelines for lawyers⁷⁹. It is nonetheless worth noting that this up-coming new breed of Chinese legal profession is indispensable to the successful implementation of the Free Trade Area that China and ASEAN are seriously contemplating. This new-born generation of Chinese legal scholars is a welcome bonus for the international legal community. It does not deviate from, and neither impede nor impair, the work performed by the existing corps of transnational legal professionals. Indeed if anything the addition of the new breed serves to bridge the existing gap and to complement the much-needed knowledge of legal developments in the People's Republic of China.

VI CONCLUSION

This preliminary report is intended first and foremost to provide readers with a first-hand impression of the collective efforts of China and ASEAN partners to attract

⁷⁸ For a Directory of Registered Law Firms and Certified Lawyers directly under Guangxi Judicial Department (50 law firms), see *Guide to Lawyers Service of Guangxi*, published by the Justice Bureau of Guangxi Zhuang Autonomous Region and the Lawyers Association of the Region, November 2004.

⁷⁹ *Id.*, pp.18-20, *Vocational Criteria of Lawyers of Integrity*, and p.21, *Procedures and Regulations on Handling Complaints Against Lawyers*.

prospective business executives and investors who may desire to embark upon a commercial or investment venture in China or in any of the ASEAN countries. It is designed to assist entrepreneurs and industrialists in their prospective plans to invest in an industry or an enterprise in the CHINA-ASEAN Free Trade Area, and to demonstrate the advantages of the various incentives and preferential treatments being accorded to a number of attractive fields of business and economic activities under active promotion in the trade in goods or in the service sectors.

It is comforting to observe, in the second place, that in China as well as in the corresponding ASEAN countries, legal affairs and legal services are available. Investors and traders alike would need to consult legal opinions to be safe and secure in their undertakings and in the conclusion of transnational transactions and contracts with a foreign State. Investment laws in force in the designated location for investment are crucial and determinative of a decision to invest. The availability and assurance of access to commercial arbitration for private contractual disputes and State-investor arbitration for the settlement of investment disputes would afford sound and persuasive reasons for positive and favorable response.

Thirdly, it has become apparent in the process of gathering materials for this Report that the approaching reality of an unprecedented Free Trade Area with maximum strength in terms of quantity of consumers in the neighborhood of 1.85 billion is no trivial matter. The advent has been prepared with meticulous care by the planners of eleven East and South-East Asian nations with almost unlimited potentials, having regard to the interlocking relations of Free Trade Area Agreements concluded by China and those concluded by ASEAN collectively as well as individually. The over-all cumulative effect of the numerous Free Trade Area Agreements applicable to China and to ASEAN and each of the ASEAN countries will help strengthen by geometric progression the intensive advancement in the central cores of CHINA-ASEAN closer economic cooperation.

Furthermore, the presence and active participation of a new breed of contemporary transnational lawyers from all quarters of CAFTA are adding further reassurance and

greater confidence in the planning and initiation of direct cross-border investments to ensure a reasonable margin of profits in the returns. Other ancillary services will in turn assume their rightful place, as dictated by the call of business enterprises. Such supporting services as logistics, infrastructures, telecommunications, international banking, electronic commerce and other financial services which can be viewed as positive reinforcements are already partially in active operation will shortly be available in whole.

In the ultimate analysis, time will tell the success story of CAFTA. The organization of CAFTA Expo each successive year in Nanning would appear to serve, as it has thus far served, a useful and practical purpose of providing at a minimum a convenient and readily serviceable platform to allow a significant number of business partners from various parts of CAFTA year in year out to meet and negotiate with the view to enhancing international trade, both within the CAFTA region and also in the global export and import trade.

The present reporter keeps a close watch with anticipation to learn more of the progress being made and to be achieved in the near future by the Ten + One, a welcome synonym for ASEAN-CHINA Free Trade Area.

San Francisco, 4 December 2005